

**UNITED STATE BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

**LOGAN DEWEY FORSYTH, III
DEBTOR**

**CASE NO. 10-80861
CHAPTER 13**

OBJECTION TO CONFIRMATION OF THE AMENDED CHAPTER 13 PLAN

COMES NOW Wells Fargo Bank, NA (hereinafter “Creditor”) a secured creditor, by and through counsel, Brock and Scott, PLLC, and objects to confirmation of the Debtor’s Amended Chapter 13 Plan (hereinafter “Plan”), and respectfully shows the Court:

1. On May 17, 2010, the Debtor, Logan Dewey Forsyth, III filed a petition with the Bankruptcy Court for the Middle District of North Carolina under Chapter 13 of Title 11 of the United States Code.
2. The Debtor holds title to the real property (hereinafter “Collateral”) described in that Deed of Trust recorded in the Durham County Register of Deeds in Book 2200 at Page 950 and recorded on June 5, 1996 (hereinafter “Deed of Trust”) with an address of 3914 Glenn Road, Durham, NC 27704. A copy of the Deed of Trust is attached hereto and is incorporated herein as Exhibit “A”.
3. Creditor holds a Promissory Note secured by the Deed of Trust from the Debtor in the original principal amount of \$63,200.00 and dated June 3, 1996 (hereinafter “Note”). A copy of the Note is attached hereto and incorporated herein as Exhibit “B”.
4. Upon information and belief, the approximate payoff due and owing to Creditor as of April 21, 2011 is \$109,057.27. Creditor filed a proof of claim June 8, 2010 consisting of amounts owed Creditor by Debtors under the terms of the Note and Deed of Trust (collectively “Contract”).
5. As of filing of the Creditor’s proof of claim on June 8, 2010, the arrears listed consisted of fifty-three (53) months of principal and interest payments due per the Contract, \$3,233.57 due per the escrow provisions of the Contract, and other various fees/charges/expenses due per the Contract.
6. Contradictory to the Plan, Creditor contends that the Collateral is the Debtor’s primary residence and the Creditor’s claim, which is based on amounts due under the Contract, which therefore includes amounts owed to Creditor as required under the

escrow provisions of the Contract, is only secured by the real property that is the Debtor's principal residence and therefore the anti-modification provisions of 11 U.S.C. §1322(b)(2) apply to Creditor's claim.

7. The Plan proposes an interest rate of 5.25% which is substantially lower than the contract rate of 9.7% and bifurcation of the claim into secured and unsecured portions.
8. Creditor reserves the right to object to valuation of the Collateral within sixty (60) days of confirmation of the Plan .

WHEREFORE, the Creditor prays the Court as follows:

1. Deny confirmation of the Plan.
2. Find that Creditor's claim is protected by the anti-modification provisions of 11 U.S.C. § 1322(b)(2) and allow Creditor's claim as fully secured as a long term debt and prohibit any modification of Creditor's interests.
3. If the Court finds that Creditor's claim is not protected by the anti-modification provisions of 11 U.S.C. § 1322(b)(2), require Debtors to pay the entire claim in equal monthly payments pro-rata over the life of the Plan in accordance with 11 U.S.C. § 1325(a)(B) and 11 U.S.C. § 1322(d).
4. That Creditor be permitted to file a motion to value the Collateral within sixty (60) days of any confirmation of the Plan.
5. Grant Creditor all further relief as the Court deems just and proper.

This, the 25th day of July, 2011.

BROCK AND SCOTT, PLLC

/s/ Sean M. Corcoran

Sean M. Corcoran

Attorney for Creditor

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Case 10-80861 Doc 40 Filed 07/25/11 Page 3 of 3